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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. JUAN CARLOS COLIN MANZANO, Defendant and Appellant.	G051404 (Super. Ct. No. 14WF1665) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Cheri T. Pham, Judge. Affirmed.

Gerald J. Miller, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General, Peter Quon, Jr., and Lise S. Jacobson, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

INTRODUCTION

Defendant Juan Carlos Colin Manzano appeals from the judgment entered after a jury found him guilty of first degree residential burglary, aggravated assault, vandalism, and attempted criminal threats. Manzano contends that, as to his conviction for first degree residential burglary, the trial court prejudicially erred by excluding evidence of his postarrest statements "which established that [he] was delusional and lacked the requisite intent to commit the offense." (Capitalization & boldface omitted.)

We affirm. The trial court properly excluded Manzano's proffered evidence. Even if the court's exclusion of that evidence had constituted an abuse of discretion, it was not prejudicial.

FACTS

In April 2014, Miguel Manjarrez rented a room in a Garden Grove house owned by Celso Nava Godinez (the house). Manjarrez lived in the house with his wife and children. Manzano had previously rented a room in the house for about five years, but, at some prior unspecified time, was evicted because he started "acting wrong" with respect to Godinez's two teenaged daughters. Manzano had made "some comment" to Godinez's daughters and they had complained to Godinez about it. One night, while Manzano was still living in the house, Manzano had called the police, complaining that Godinez's daughters were trying to harm him. When the police arrived, they found Godinez's daughters asleep in their room. Godinez had to "go through a court process" to get Manzano to leave.

Late in the evening on April 20 or early in the morning on April 21, 2014, Manjarrez was watching television when he heard Manzano's voice in the yard of the house. He heard Manzano, who was angry, say in a loud voice, "Yasmin, I'm here to kill you. It's your fault that I can't get a job." He also said something to the effect of

"Yasmin, you've put a spell on me," "I'm bewitched," and/or "you bewitched me." Yasmin Nava was one of Godinez's daughters and was about 19 years old at the time of trial.

Manjarrez watched Manzano angrily tap a shiny object in his hand. Manzano stayed there for 10 to 15 minutes before he left. Manjarrez did not call the police because the incident "happened too fast."

During the morning of April 21, Manjarrez found an eight-inch-long knife, which he thought was about the same size as the object he saw Manzano using to tap his hand, under the orange tree in the yard. Manjarrez had cleaned the yard the day before and did not see the knife then. Manjarrez told Godinez that he had heard Manzano loudly talking about witchcraft and threatening Yasmin Nava. Manjarrez showed Godinez the knife he had found; Godinez did not recognize the knife as belonging to anyone who lived in the house.

The following evening, around 11:00 or 11:30 p.m., Godinez, who slept in the living room of the house with his wife and son, heard three bangs. The front door glass, the window in the room where Manjarrez and his family slept, and the window in the room where Godinez's daughter, Elizabeth Nava,[1] and her baby were sleeping, were all broken.

Godinez opened the front door and saw Manzano standing with a shovel in his hand, asking why Godinez's daughters were "doing something to him" and/or telling Godinez to "[t]ell [his] daughters to leave [Manzano] in peace." Manzano told Godinez that if he came any closer, he was going to hit him with the shovel. Godinez told one of his daughters to call the police. Manzano walked away and Godinez got in his car to follow him.

[1] Elizabeth Nava was 20 years old at the time of trial.

Garden Grove Police Officer Charles Starnes responded to the call about Manzano's conduct. Starnes saw Manzano walking while holding a shovel upside down with both hands. He was sweaty and appeared angry. Starnes stopped his marked black-and-white police car about 30 feet away from Manzano, exited the car, identified himself, and instructed Manzano to put down the shovel. Manzano did not put down the shovel and kept walking. After Starnes and his partner "kept yelling" at Manzano to put down the shovel, he did so, was placed in handcuffs, and taken to the Garden Grove Police Department jail.

Elizabeth Nava testified she saw "glass everywhere under the window" in her room; she suffered a small cut on her finger. She further testified that when Manzano had lived in the house, he and she only said "hi or bye" to each other and did not otherwise communicate. She stated she never had "this kind of interaction" with Manzano before.

PROCEDURAL HISTORY

Manzano was charged in an information with (1) first degree residential burglary in violation of Penal Code sections 459 and 460, subdivision (a)[2] (count 1); (2) aggravated assault in violation of section 245, subdivision (a)(1) (count 2); (3) vandalism in violation of section 594, subdivisions (a) and (b)(1) (count 3); and (4) attempted criminal threats in violation of sections 664, subdivision (a) and 422, subdivision (a) (count 4). As to count 1, the information alleged, pursuant to section 667.5, subdivision (c)(21), that nonaccomplices were present during the commission of the residential burglary offense. As to count 4, the information alleged, pursuant to section 12022, subdivision (b)(1), and within the meaning of section 1192.7, that Manzano personally used a deadly weapon in the commission of the attempted criminal

[2] All further statutory references are to the Penal Code unless otherwise specified.

threats offense. The information was amended, under section 1009, to state count 1 was committed with the intent to commit aggravated assault and/or felony vandalism.

The jury found Manzano guilty of all four counts as charged. The jury found it to be true that a nonaccomplice was present in the residence during the commission of the residential burglary offense. The jury found it not to be true that Manzano personally used a deadly or dangerous weapon in the commission of the attempted criminal threats offense.

The trial court imposed a total prison term of four years four months. Manzano appealed.

DISCUSSION

Manzano argues the trial court erred by excluding evidence of statements he made to the police after he was arrested and read his rights under *Miranda v. Arizona* (1966) 384 U.S. 436. "We review a trial court's rulings on the admission and exclusion of evidence under the abuse of discretion standard." (*People v. Thompson* (2010) 49 Cal.4th 79, 128.)

Before trial, Manzano sought the admission of evidence that after he was arrested on April 22, 2014, he told a police officer, as summarized by his trial counsel at a pretrial hearing, that "he hears voices in his head, and he sees pictures of Elizabeth and Yasmin Nava. He hears voices of . . . the two girls. He believes that they committed witchcraft on him. And he said . . . when he hears the voices his penis starts to leak and smell bad. He believes this is caused by Elizabeth Nava. He went to the location to get their attention." Manzano's counsel argued: "I guess it would explain his intent was to go over there and get their attention, not to go over there and commit a 245 or a theft, it was just to go get their attention."

The trial court denied Manzano's request that his statements be admitted into evidence. The court stated to counsel, "[i]t is hearsay because you're seeking to

admit it for the truth of the matter to show your client did not have the requisite intent of the crime, but because it is hearsay it has to fall under the exception to the hearsay rule and the state of mind exception is an exception to the hearsay rule. But under [Evidence Code section]1252 it lacks the trustworthiness, therefore, it takes it out of [Evidence Code section]1250 [(state of mind exception to hearsay rule)]. And there is no other exception to the hearsay rule that would allow me to admit this type of statement." The court explained the statements lacked trustworthiness because "[h]ere the interview was clearly post-arrest and post-*Miranda* when the defendant had the strongest possible motive for misstatement. The conduct which he is alleged to have committed did not accompany the statement that he made to the police after his arrest." (Italics added.)

In his opening brief, Manzano argues the proffered statements should have been admitted as relevant to prove one issue—that he did not form an intent to commit a burglary but to show he "was delusional and lacked the requisite intent." (Capitalization & boldface omitted.) He argues his conviction for first degree residential burglary should therefore be reversed.

Evidence that during his postarrest interview Manzano stated he (1) "hears" Elizabeth Nava's and Yasmin Nava's voices in his head which causes "his penis . . . to leak and smell bad," (2) "sees" their "pictures," and (3) believed they were practicing witchcraft on him and that Elizabeth Nava was the "cause[]," is not relevant to prove whether he was capable of forming the intent to enter the house to commit an aggravated assault and/or vandalism. That evidence was also not relevant to prove, as he also told the police, he formed an intent to only gain Elizabeth Nava's and Yasmin Nava's attention. If anything, evidence of those three categories of statements would have been relevant to prove Manzano's motive for intending to enter the house for the purpose of committing an aggravated assault and/or vandalism. Thus, evidence of those three categories of statements was irrelevant to proving the issue it was offered to prove and was therefore properly excluded.

Even if evidence of those three categories of statements was relevant to prove Manzano's intent, those statements, along with his additional statement to the police that he went to the house to get Elizabeth Nava's and Yasmin Nava's attention, constituted hearsay because they were offered for the truth of the matter they asserted—namely, what Manzano heard, saw, believed, and intended. Manzano argues that his statements came within the state of mind hearsay exception codified at Evidence Code section 1250, which provides: "(a) Subject to Section 1252, evidence of a statement of the declarant's then existing state of mind, emotion, or physical sensation (including a statement of intent, plan, motive, design, mental feeling, pain, or bodily health) is not made inadmissible by the hearsay rule when: [¶] (1) The evidence is offered to prove the declarant's state of mind, emotion, or physical sensation at that time or at any other time when it is itself an issue in the action; or [¶] (2) The evidence is offered to prove or explain acts or conduct of the declarant. [¶] (b) This section does not make admissible evidence of a statement of memory or belief to prove the fact remembered or believed."

The California Supreme Court has explained that "this exception to the hearsay rule is inapplicable 'if the statement was made under circumstances such as to indicate its lack of trustworthiness.' (Evid. Code, § 1252.)" (*People v. Ervine* (2009) 47 Cal.4th 745, 778.) """"The decision whether trustworthiness is present requires the court to apply to the peculiar facts of the individual case a broad and deep acquaintance with the ways human beings actually conduct themselves in the circumstances material under the exception. Such an endeavor allows, in fact demands, the exercise of discretion."' [Citation.] 'To be admissible under Evidence Code section 1252, statements must be made in a natural manner, and not under circumstances of suspicion, so that they carry the probability of trustworthiness. Such declarations are admissible only when they are "'made at a time when there was no motive to deceive.'"""" (*Id.* at pp. 778-779.)

In *People v. Ervine, supra,* 47 Cal.4th at page 779, the Supreme Court found the trial court did not abuse its discretion in excluding evidence of the defendant's postoffense handwritten notes, explaining: "At the time defendant wrote these documents, he was trapped inside his house; personnel from the Lassen County Sheriff's Department and other law enforcement agencies were just outside. He was aware that his only options were surrender or suicide, and his statements focus largely on securing forgiveness. In addition, he had been grazed by a bullet himself, which is what caused him to stop shooting, not a sudden concern over the welfare of the officers outside, and he elected to write these notes while attempting to pursue negotiations with law enforcement. There was thus ample ground to suspect his motives and sincerity when he wrote these self-serving documents."

Here, Manzano's statements were made after he had been arrested. The trial court therefore did not abuse its discretion by excluding the statements under Evidence Code sections 1250, subdivision (a) and 1252, as Manzano had a motive to deceive when he made the proffered statements—at a minimum, to reduce his criminal liability exposure.[3]

[3] In addition, evidence of Manzano's postarrest statement that he had gone to the house earlier that night to gain attention did not constitute a statement of Manzano's existing state of mind, emotion, or physical sensation. Instead, Manzano's statement constituted a statement of his memory of the reason he went to the house that night. Evidence Code section 1250, subdivision (b) expressly states that evidence of a statement of memory or belief to prove the fact remembered or believed is not admissible under section 1250, subdivision (a). (See Assem. Com. on Judiciary com., 29B pt. 4 West's Ann. Evid. Code (2015 ed.) foll. § 1250, p. 420 [the limitation of section 1250, subdivision (b) "is necessary to preserve the hearsay rule. Any statement of a past event is, of course, a statement of the declarant's then existing state of mind—his memory or belief—concerning the past event. If the evidence of that state of mind—the statement of memory—were admissible to show that the fact remembered or believed actually occurred, any statement narrating a past event would be, by a process of circuitous reasoning, admissible to prove that the event occurred"].)

Even if the trial court erred in excluding any or all of the proffered statements, Manzano suffered no prejudice. We assess prejudice under the standard of *People v. Watson* (1956) 46 Cal.2d 818, 836, even though the statements were evidence Manzano intended to submit in his defense. "As a general matter, the '[a]pplication of the ordinary rules of evidence . . . does not impermissibly infringe on a defendant's right to present a defense.'" (*People v. Fudge* (1994) 7 Cal.4th 1075, 1102-1103.) "Although completely excluding evidence of an accused's defense theoretically could rise to this level, excluding defense evidence on a minor or subsidiary point does not impair an accused's due process right to present a defense." (*Id.* at p. 1103.)

Here, the trial court did not categorically deny Manzano the right to present a defense or preclude him from presenting whole categories of evidence based on a priori or per se determinations of relevance. (See *People v. Hawthorne* (1992) 4 Cal.4th 43, 58-59.) Rather, the trial court applied ordinary rules of evidence to exclude the statements Manzano made to the police following his arrest.

It is not reasonably probable Manzano would have received a favorable result if the statements had been admitted. Evidence was presented at trial that Manzano engaged in bizarre behavior and accused Elizabeth Nava and/or Yasmin Nava of betwitching him. Furthermore, the evidence could arguably be interpreted as showing a burglary occurred the moment Manzano broke through, and thereby entered, the first window with the shovel. (See *Magness v. Superior Court* (2012) 54 Cal.4th 270, 279 [holding "something that is *outside* must go *inside* for an entry to occur," and "[a] person, a foot, a hand, or a tool can 'enter' a house"].) Manzano's intent to vandalize the house, if not to also commit aggravated assault, was well established by the evidence that he broke not only one, but three windows, causing shards of glass to fall into the bedrooms of sleeping occupants.

DISPOSITION

The judgment is affirmed.

FYBEL, J.

WE CONCUR:

O'LEARY, P. J.

IKOLA, J.